

EXHIBIT 5

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Via Email

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May 24, 2024

Re: *State of Texas et al. v. Google LLC*, No. 4:20-cv-957-SDJ (E.D. Tex.)

Counsel,

We write regarding our agreement to provide written responses in lieu of oral testimony on Topics 45, 65, 83, 104(f), 104(i), and 104(q) (as narrowed in our May 7 Letter) from Plaintiffs' First 30(b)(6) Notice to Google.

Topic 45. Google's verified written response identifying its disclosures of Reserve Price Optimization, Dynamic Revenue Share, and Bernanke is found in Appendix A to this letter.

Topic 65. Google agreed to provide a written response detailing the factual basis for Google's affirmative defenses, containing a level of detail similar to that which Texas's 30(b)(6) witness provided for a similar topic in Google's notice. Google has moved to dismiss Plaintiffs' Fourth Amended Complaint and therefore has not answered the operative complaint nor asserted affirmative defenses. The factual basis for Google's affirmative defenses will be the documents and data, discovery responses, and testimony produced or provided by Google, Plaintiffs, and third parties in this case as well as expert opinions or analyses.

Topics 83, 104(f), 104(i), and 104(q). Google agreed to conduct a reasonable investigation into whether Google analyzed, in the ordinary course of business, the effect of an Auction Mechanic on fees, revenue share, margins, and/or take-rates or "Header bidding's impact on winning prices paid by Advertisers and/or received by Publishers for impressions and take rates charged by ad exchanges," ordinary course "analysis of the flow of queries

HIGHLY CONFIDENTIAL

May 24, 2024

Page 2

running through Header Bidding as compared to Open Bidding,” and ordinary course analysis of the “impact of Header Bidding on Your Metrics, Publishers’ and/or Advertisers’ Metrics, and Your competitors’ Metrics” and identify or produce any such ordinary course analyses.

Whether Google analyzed, in the ordinary course of business, the effect of an Auction Mechanic on fees, revenue share, margins, and/or take-rates.

Because Google’s responses to Plaintiffs’ Interrogatories 7 and 8 address the same information with respect to the effects of Auction Mechanics, Google responds to this topic by referring Plaintiffs to Google’s First Amended Responses and Objections to Plaintiffs’ Third Set of Interrogatories served today.

Whether Google analyzed, in the ordinary course of business, ordinary course “analysis of the flow of queries running through Header Bidding as compared to Open Bidding.”

[REDACTED]

Whether Google analyzed, in the ordinary course of business, “Header bidding’s impact on winning prices paid by Advertisers and/or received by Publishers for impressions and take rates charged by ad exchanges,” and the “impact of Header Bidding on Your Metrics, Publishers’ and/or Advertisers’ Metrics, and Your competitors’ Metrics.”

[REDACTED]

Sincerely,

/s/ Justina Sessions

Justina Sessions

Appendix A

Google's Response to Topic 45 of Plaintiff's 30(b)(6) Notice Served February 21, 2024 (As Narrowed by the Parties May 7, 2024 agreement)

Google Auction Mechanics have been generally disclosed to Publishers, Advertisers, and other customers on Google's websites, including <https://support.google.com/> and in blog posts on Google's Google Ads & Commerce blog, DoubleClick Advertiser blog, Google Ad Manager blog, and DoubleClick Publisher blog. Google sales, partnerships, and support personnel also communicate with customers regarding changes to Google's products, as well as respond to questions regarding product changes or a customer's observed changes to performance metrics. The user interfaces of various products may also include disclosures of Google Auction Mechanics in connection with turning features on or off or adjusting settings. Google also updated the product description pages in its Help Center (e.g., the description of the Google Ad Manager auction model) to continue to accurately describe Google's products as it improved and updated them. For example:

At least as early as August 2014, Google stated "DoubleClick Ad Exchange determines the winning bidder based on the highest net bid submitted. Such net bid reflects any adjustments Ad Exchange may, at its discretion, have made to the bid submitted by the buyer for the purpose of optimizing the auction. Regardless of whether any such adjustments are made, the winning buyer will never be charged more than the bid it submits. If the respective amounts of the net bids submitted differ by a small margin, the winner among those bids may be randomly chosen." *See Auction Model v. 40*, (GOOG-AT-MDL-C-000035250).

At least as early as August 2015, Google stated "The Ad Exchange auction closing price is determined as the greater of the second-highest net bid in the Ad Exchange auction or the reserve price applied to that impression. In some cases, the auction may close at a price

lower than the reserve price applied, due to auction optimizations. Sellers are paid the Ad Exchange closing price, net of Google's revenue share, but will receive, subject to the terms governing their use of Ad Exchange, no less than the min CPM applied to the auction." *See* Auction Model v. 47, (GOOG-AT-MDL-C-000035251).

In June 2016, Google stated:

To optimize the auction, Google may choose to close an auction at a price lower than the reserve price that would have otherwise been applied. In such cases, the winning buyer may pay a price below the reserve and therefore receive a discount on its bid. A buyer that has received discount(s) on its bid(s) may face higher reserve prices in subsequent transactions to offset such discount(s).

Subject to the terms governing their use of Ad Exchange, sellers are paid the Ad Exchange closing price, net of Google's revenue share, but will receive no less than the min CPM they specified for the auction. Unless the 'per-query revenue share' setting is enabled by a Seller, auction optimizations may result in an auction closing at a price lower than the reserve price that would have otherwise been applied. Because the seller will always be paid at least its specified min CPM, the Seller may receive more than its contracted revenue share on the transaction. In subsequent transactions, the Seller's revenue share may then be reduced to offset the prior earnings in excess of the contracted revenue share, but the Seller will always receive at least its contracted revenue share across all its Ad

Exchange transactions in a given month.” *See* Auction model v. 65,

GOOG-AT-MDL-C-000035252.¹

The following is a list of the documents and other evidence of Google’s specific disclosures regarding experimentation, Dynamic Revenue Share, Reserve Price Optimization, and Bernanke.

Experiments

Google disclosed the fact that it may run experiments in its Help Center documentation, in contracts and terms of service with customers, and as part of more specific product disclosures, including but not limited to:

- Google Platform Services Terms and Conditions, available at <https://www.google.com/platforms/terms/>
- Google AdSense Terms and Conditions, available at <https://www.google.com/adsense/new/localized-terms>
- Help Center Posts, *See e.g.*, <https://support.google.com/admanager/answer/152039>. A statement in substantially similar form has been included in Google’s Help Center

¹ This statement was further revised in October 2010 v. 103, (GOOG-AT-MDL-C-000035248). Subject to the terms governing their use of Ad Exchange, sellers are paid the Ad Exchange closing price, determined by the highest net bid in the auction, but will receive no less than the minimum CPM floor price they specified for the auction. Unless the average revenue share setting is disabled by a seller, auction optimizations may result in an auction closing at a price lower than the reserve price that would have otherwise been applied. Because the seller will always be paid at least its specified minimum CPM floor price, the seller may receive more than its contracted revenue share on the transaction. In subsequent transactions, the seller's revenue share may then be reduced to offset the prior earnings in excess of the contracted revenue share, but the seller will always receive at least its contracted revenue share across all its Ad Exchange transactions in a given month.

documentation since at least as early as August 2014. *See* Ad Exchange Auction Model v. 36, (GOOG-AT-MDL-C-000035249).

- Google Blog Posts, *See e.g.*,
<https://blog.google/products/admanager/smarter-optimizations-to-suppor/>
- GOOG-DOJ-15175570
- GOOG-AT-MDL-C-000015769, -5779

Reserve Price Optimization

Google disclosed Reserve Price Optimization in at least the following statements:

- Help Center Posts, *See e.g.*
<https://blog.google/products/admanager/smarter-optimizations-to-suppor/>
- In June 2016, Google stated in the Help Center:

To optimize the auction, Google may choose to close an auction at a price lower than the reserve price that would have otherwise been applied. In such cases, the winning buyer may pay a price below the reserve and therefore receive a discount on its bid. A buyer that has received discount(s) on its bid(s) may face higher reserve prices in subsequent transactions to offset such discount(s).

Subject to the terms governing their use of Ad Exchange, sellers are paid the Ad Exchange closing price, net of Google's revenue share, but will receive no less than the min CPM they specified for the auction. Unless the 'per-query revenue share' setting is enabled by a Seller, auction optimizations may result in an auction closing at a price lower than the reserve price that would have otherwise been applied. Because the seller will always be paid at least its specified min CPM, the Seller may receive

more than its contracted revenue share on the transaction. In subsequent transactions, the Seller's revenue share may then be reduced to offset the prior earnings in excess of the contracted revenue share, but the Seller will always receive at least its contracted revenue share across all its Ad Exchange transactions in a given month" Auction model v. 65, (GOOG-AT-MDL-C-000035252).²

- In response to questions or outreach from specific customers, Google would have provided the information described in GOOG-DOJ-04937154.

Dynamic Revenue Share:

Google disclosed Dynamic Revenue Share v.2 in the following statements:

- GOOG-AT-MDL-C-000015769, -5779.
- Additionally, publishers were notified of dynamic revenue share in the publisher ad server user interface beginning in or around June 2016.
- In response to questions or outreach from specific customers, Google would have provided the information described in GOOG-NE-04934281.
- A list of some specific customers who provided feedback regarding DRS can be found at GOOG-DOJ-14735882.

² This statement was further revised in October 2010 v. 103, (GOOG-AT-MDL-C-000035248). Subject to the terms governing their use of Ad Exchange, sellers are paid the Ad Exchange closing price, determined by the highest net bid in the auction, but will receive no less than the minimum CPM floor price they specified for the auction. Unless the average revenue share setting is disabled by a seller, auction optimizations may result in an auction closing at a price lower than the reserve-price that would have otherwise been applied. Because the seller will always be paid at least its specified minimum CPM floor price, the seller may receive more than its contracted revenue share on the transaction. In subsequent transactions, the seller's revenue share may then be reduced to offset the prior earnings in excess of the contracted revenue share, but the seller will always receive at least its contracted revenue share across all its Ad Exchange transactions in a given month.

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May 24, 2024

Page 8

Bernanke

Consistent with Google's practice and customers' expectations, Google did not specifically disclose bid optimization techniques such as Bernanke.

HIGHLY CONFIDENTIAL

May 24, 2024

Page 9

Verification

I, [REDACTED] declare:

1. I am a [REDACTED]
[REDACTED], employed by Google LLC (the “Company”).
2. I have knowledge of the facts and circumstances relating to the preparation of this response.
3. Based on this knowledge, I am authorized to verify on behalf of the Company that the requested information in the possession, custody, control, or knowledge of the Company has been set forth fully and accurately in the response to Topic 45, subject to the Company’s written objections. If the Company becomes aware of the need to supplement or amend any answers to Topic 45, we will do so promptly.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on May 24, 2023

[REDACTED]